

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY : MDL 1456  
AVERAGE WHOLESALE PRICE :  
LITIGATION, :  
  
: Master File No. 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO: :  
ALL ACTIONS :  
: Judge Patti B. Saris  
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**COUNTER-MOTION TO LIMIT THE SCOPE OF THE SUBPOENAS  
DIRECTED TO FIRST DATABANK, INC. AND PATRICIA KAY MORGAN**

Pursuant to Fed. R. Civ. P. Rules 26(c) and 45(c), non-parties First DataBank, Inc. and Patricia Kay Morgan (collectively “FDB”) respectfully move this Court for a protective order limiting the scope of all outstanding subpoenas directed to them in their consolidated actions to require no more than (1) the production of all documents in FDB’s possession concerning the pricing of particular, relevant drugs and/or drug manufacturers which can reasonably be located through a diligent search; (2) all transcripts of sworn testimony previously taken of FDB, that explain the process by which FDB gathers drug pricing information and determines “Blue Book AWP;” and (3) an affidavit sufficient to authenticate the documents and transcripts produced. In support of this motion FDB submits the accompanying Memorandum of Law, Declaration of James Breen, and Declaration of Robert J. Hawley, and the exhibits attached thereto.

**REQUEST FOR ORAL ARGUMENT**

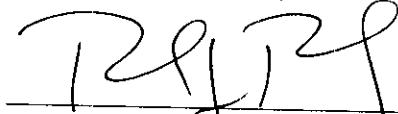
FDB respectfully requests oral argument on its Counter-Motion to Limit the Scope of the Subpoenas (and on Defendants’ initial motion). Oral argument would be helpful in this case,

given the numerous subpoenas at issue, FDB's status as a non-party, and the important statutory and constitutional issues which are at stake.

Dated: August 20, 2004

Respectfully submitted,

MURPHY & RILEY, P.C.



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